

WEST TISBURY ZONING BOARD OF APPEALS
Minutes for Thursday, January 27, 2022 meeting
Online meeting via ZOOM- @ 5:00 PM

Approved on February 10, 2022

Present: Larry Schubert, Julius Lowe, Deborah Wells, John Rau, Jeffrey Kaye

Absent: Andy Zaikis and Casey Decker

Also Present: Pam Thors, Bd. Administrator, Alexandra and Alex BenDavid, Elizabeth Carroll, Wayne Greenwell, Peter Mauro, Amy Waltz, Judith Birsch, Barry Richmond, Joy and Ned Robinson Lynch, James O'Donnell, Mr. & Mrs. Gorenberg, Doug Best, Bob Breth, James and Jennifer Sepanara, Carol Marrama

5:00 pm –

The board took up the discussion regarding the proposed changes to the application which add section 9.2-2 to the application packet. The question that remains is whether to just verify that the applicant has read the bylaw or to require the applicant to verify that the application complies to all requirements of the bylaw.

Deborah questioned whether applicants could effectively answer the questions posed in the bylaw prior to meeting with the board.

Larry suggested that verifying that the applicant had read 9.2-2, might be sufficient. He stated that further review is the job of the board and asking the applicant to interpret the section of bylaw as it relates to their application is inappropriate.

Jeffrey suggested putting the onus on the applicant to supply information for the board, noting that the more information they have, the better. John agreed.

Pam read the DRAFT application update which asks the applicant to address the question of compliance to the bylaw section.

Deborah stated that looking at it personally, she found there are many questions that may be impossible for the applicant to answer unless they hired experts to address them. She said that if she were applying, attesting to the compliance or lack thereof would not be something she was comfortable with.

John said that if decisions include a review of section 9.2-2, the section should be carefully scrutinized and that responsibility should fall on the applicant.

The board agreed to table this discussion until after the hearings.

5:15 pm – (Continuation) A public hearing on an Application for a Special Permit from James O'Donnell to operate a Service Business, (Electrician) under Section 8.5-2 of the Zoning Bylaws at 664 Old County Rd., Assessor's Map 26, Lot 29 RU District.

Pam read the Notice. Larry stated that he, Julius, Casey and Jeffrey had done a site visit to the property and looked over the property, driveway and structures. All agreed that Leyland Cypress could be planted or a stockade fence built in the woods to block light from the property. They said they had looked at Elias Lane on the North side of the property and agreed that evergreens could be planted there and around the paddock to limit noise and light.

James said that the best-case scenario would be to plant trees or construct a fence along Elias Lane.

Larry asked if there would be specific sections, adding that he is not a fan of stockade fences. He said that he would consider the answer to be more trees for screening.

Larry invited members of the public in attendance to speak.

Larry Gorenberg, an abutter, said that things coming out as a result of the site visit are not things that are important to them. He expressed his interest in how the business would be monitored and corrected if necessary. He noted that no one had said anything about decreasing light from the property.

Larry explained that the intent of the bylaw was to have diversified communities where people needing to work for a living here would be able to do so provided they satisfied the requirements of the bylaws. He stated that this allows businesses where the work is done off site may keep equipment and or vehicles at home but they are gone during the workday.

James reiterated that all they want to do is store 2 vans and some equipment on the property. He added that a lot of the property is dedicated to the horses they keep. He said he is just looking to make an honest living.

Barry Richmond, an abutter, expressed his concern for wear and tear on the driveway since a lot of the traffic, in his opinion, would be generated by the business.

Larry asked if they, as neighbors, could come to an agreement on this.

James said he has no problem with this and is always willing to repair the road if necessary. He said the initial agreement was that they would split the cost of maintaining the road and he considers this to be fair.

James said he has been in business since 2020 and that he was told by the Building Inspector, while applying for a building permit for his new barn, that he should have a Special Permit for his business.

Joy Robinson-Lynch, an abutter, said that all of this could have been avoided if discussion with the neighbors had taken place.

Jeffrey asked if storage would be screened.

James said that most storage is in the garage and there is an enclosed pen for some supplies. He said that the proposed barn is for 2 horses.

Larry suggested that if approved, a condition might be that any expansion beyond 1 more van and 2 more employees would have to be reviewed by the ZBA again.

Julius noted that the bylaw limits employees to 3 before another review would be necessary.

Pam asked what the weight of the two business vehicles is.

James said they are both 8,700 GVW and his personal vehicle is 9,500 GVW.

A motion was made by Deborah Wells and seconded by John Rau to close the Public Hearing and open the Board Meeting.

Conditions of Approval discussed were:

- 1) If the Service Business is to expand beyond one additional vehicle and 2 additional employees, owner will be required to return to the ZBA to apply for an amendment to this Special Permit.*
- 2) Evergreen screening will be planted along the Northern property line to effectively screen lighting.*

Julius asked what lighting is projecting from the barn to Elias Lane.

James said that in the barn they have LED downlighting that are only on when they are caring for the horses and when they are mucking stalls. He said that the interior lights are not used much in the months where the days are longer.

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes.

Larry went over the twenty-day appeal period.

5:35 pm A Public Hearing on an Application for a Special Permit from Robert R. Breth to allow a proposed 672 sq foot garage to be used for winter storage of bicycles for All Star Bike Rentals under section 8.5-1B, (Home Occupations by Special Permit), of the West Tisbury Zoning Bylaws at 11 Oak Ln., Assessors' Map 10, Lot 25.1, RU District.

Pam read the Notice and the Site Plan was reviewed.

Bob Breth said that he has 2 bike shops requiring storage space for the bikes. He explained that they are building a garage to store bikes in the off season and 2 vintage cars.

Larry asked if the bikes are stored during the winter and then taken out in the spring. Bob said it is for general storage but most activity would be in the spring and winter.

Pam read the correspondence, (see file). There were two 3 letters in support and 3 letters in opposition to the application.

Findings were as follows:

- 1) Bicycles are stored in the existing garage as well but more space is needed.*
- 2) Customers would never be present on the property.*
- 3) There would never be more than two employees on the property at one time.*
- 4) Visits to the garage to pick up bicycles would be minimal.*
- 5) There were three letters in support of the application and two letters in opposition.*
- 6) The bus tour company owned by the applicant was sold in 2020.*
- 7) The only business use for the garage will be for bicycle storage.*
- 8) There is an outdoor stairway to the second floor of the garage.*
- 9) There will be two trips in and out of the property on most days.*

Julius stated that it is just a garage and that business storage there should not be much different than if it were a typical garage used for residential storage.

When asked about traffic at the entrance to Oak Lane, Bob said he has never seen more than two cars backed up there. James Sepanara asked if the board was aware of a traffic study at the intersection of Old County and Oak Lane.

Carol Marrama, an abutter directly across the street said that most abutters are not as negatively impacted as she is by the business. She said she wonders why Mr. Breth was not forced to keep some buffer around her property as she was. She went on to read her letter to the room.

Jeffrey stated that the ZBA tries to appease both parties in deciding on home business applications.

Larry asked about a site visit. Jeffrey said he would like to see the property.

Julius said he agrees with James regarding activity on Oak Lane but said that a site visit would not change the facts. He said that in his opinion, this business would not make a noticeable difference in the traffic situation there.

John Rau and Deborah Wells moved and seconded a motion to close the Public Hearing and open the Board Meeting.

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes.

Larry went over the twenty-day appeal period.

5:55 pm A Public Hearing on an Application for a Special Permit from Douglas Best III to amend Special Permit #2021-15 to seek compliance for a garage built instead of the carport allowed under the approved Special Permit, at 1201 State Rd., Assessors' Map 34, Lot 6, RU District under Section 9.3-3 of the West Tisbury Zoning Bylaws.

Pam read the hearing notice and a picture of the garage was shared.

Larry verified that the Special Permit was for a carport but after realizing he needed more protection from the elements, a garage was built.

Doug apologized to the board for going ahead with the change without ZBA approval. He said the garage makes more sense and the 2 abutters most affected by the garage are in support of his application.

John asked if he is just adding doors. Doug said that the supports for the carport were just posts but he built the addition so that doors could be added.

Deborah asked if the doors would be glass. Doug said he always meant to have as much natural light in the structure as possible so he wants them to be glass doors.

Larry verified that the change being requested is building a garage versus building a carport.

Julius moved and Deborah seconded a motion to close the Public Hearing and open the Board Meeting.

A roll call vote was taken to grant the Special Permit with Conditions with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes.

Larry went over the twenty-day appeal period.

6:15 pm – (Continuation) - A Public Hearing on an Application for a Special Permit from Alexander BenDavid to operate a Service Business, (landscaping and power-washing), in a residential neighborhood under Sections 8.5-2 (Non-residential Uses in the RU and VR Districts) and 3.1-1 (Use Table), of the Zoning Bylaws at 43 Old County Rd., Map 10, Lot 18.1, RU District

Pam read the hearing notice.

Alexandra said that they discussed ways to mitigate the effects of the business on the neighbors. She went over the site plan indicating repairs and screening they would take care of to ameliorate the noise produced by the machinery.

Alex noted the improvements they had made to the property, pointing out that this could have been the source of much of the noise. He added that they want to get along with everyone in the neighborhood. He said they plan to plant trees to screen along Stoney Hill Rd. and that they have already planted screening along the Old Mail Rd. He stated that they plan to go in and out of the property only a few times per day. He also noted that he would be happy to restore the road to any condition abutters would like him to. He went on to say they are trying to shield the driveway opposite theirs and has offered his services to Elizabeth Carroll to help screen light and noise from her property.

Larry Greenwell stated that mowing the lawn is not the issue and that fencing and or planting is not going to mitigate the noise emanating from the property. He read a statement citing that the business does not comply with the intent of the Home Occupations bylaw, referring to vibration and noise which he finds to be insufferable. He said that the ZBA should adhere to the bylaws.

Peter Mauro, another abutter stated that he doesn't like the noise of the trucks coming in and going out 10 times a day.

Amy Walsh read her letter in opposition to the application, (see file). She said the business has already changed the nature of the neighborhood. She also noted that there are properties available to rent for storage of large business machinery, adding that it will only get worse in the summer months. She also brought up the regulations for Special Ways.

Jeffrey noted that that the use is allowed but only within the parameters of the bylaw, asking what conditions they would be considering.

Elizabeth Carroll the abutting neighbor across the road commended the BenDavids for cleaning up the property, but stated that she is against the granting of the application.

Larry told the BenDavids that he doesn't want them to feel attacked but needed to read the other correspondence. The letter from Elizabeth Carroll was read, (see file). Pam then read the list of vehicles submitted by the applicant, (see file).

Deborah asked about the screening trees and how they would be planted. She also asked if they could operate the business without using the Special Way.

Alexandra said they cannot use the 20' way leading to Yellow Brick Rd., adding that there is no ill intent, and that they just want to follow the rules.

Wayne Greenwell, an abutter, said that screening with trees will not reduce the noise and vibration caused by the machinery travelling up and down the road, adding that this is not the setting for diesel trucks and this amount of noise.

Pam read section A & E of bylaw section 8.5-2 bringing up the intent of the Service Business Bylaw.

Alexandra stated that she agrees with neighbors that a residential neighborhood is affected by a home business but that parcels in the Light Industrial District are occupied by much larger businesses. She said that they cannot compete for those spaces and that the Town needs to look at the need for more opportunities for business vehicle storage for smaller businesses that are too big for residential neighborhoods. She stated that they do not want to impose on neighbors but want to build a solid life here, adding that there are not a lot of viable opportunities for families to make a living in order to support a family.

Julius suggested that this application requires a site visit because of all the Service Business applications they have had before them, this one presents the most impact on neighbors.

Alexander stated that luckily the property has many structures for storage so that most of their equipment can easily be stored out of sight

Wayne Greenwell suggested that this is another case of forgiveness vs permission and that the applicant might have applied prior to purchasing the property.

The BenDavids both spoke to the research they did prior to purchasing the property noting that the prior agricultural use with large vehicles and machinery did not seem so different than the business they wanted to conduct there. Alex read a section of the Rural District definition in the bylaws. They reiterated that they are open to reasonable conditions because they don't have any other options.

It was agreed that a continuance and a site visit would be beneficial.

Elizabeth Carroll asked that if a site visit takes place, the board makes note of the condition of the Special Way.

It was also noted that the business will be much more active in the spring and summer months than it is right now.

Elizabeth asked what the agreement is on present activity at the site. Larry explained that working on the Special Permit with the ZBA is considered a good faith effort and is allowed to continue.

Peter Mauro noted that his surveillance camera shows vehicles in and out at least 10 times per day.

Jeffrey and Julius moved and seconded a motion to continue the hearing.

A roll call vote was taken to Continue the hearing until February 17, 2022 at 5pm with the following resulting votes;

L. Schubert-yes, J. Lowe-yes, D. Wells-yes, J. Rau-yes, J. Kaye-yes.

The board resumed the discussion regarding the inclusion of section 9.2-2 in the ZBA application and whether or not the applicant should be responsible for addressing requirements in writing or just attest to the fact that they had read the section of bylaw.

Jeffrey stated that in Chilmark it is mandatory for the applicant to address each and every category in their review criteria. He suggested that leaving this work to the applicant is appropriate.

Larry disagreed, stating that the criteria is supposed to be used by the board to decide on the application. He noted that it is the job of the ZBA to go through the section in order to judge whether an application is non-compliant in any areas.

Julius agreed that inviting the applicant to do the ZBA's job before they have even looked at the application would be unfair and ineffective.

John said that it should not be a surprise to applicants that the board is looking at these details.

Larry stated that they are helping the applicant just by including the bylaw section in the application packet.

It was agreed to table this discussion until the next meeting.

The Meeting adjourned at 8:00 pm.

Respectfully Submitted,

Pam Thors-Board Administrator